IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 541 of 2005

HONOURABLE MR.JUSTICE ANIL R. DAVE

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant(s)

Versus

KANUBHAI SOMABHAI NAYKA & 3 - Opponent(s)

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Appearance :
MR KT DAVE, APP, for Appellant(s) : 1,
None for Opponent(s) : 1 - 4.

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CORAM : HONOURABLE MR.JUSTICE ANIL R. DAVE

and

HONOURABLE MR.JUSTICE KS JHAVERI

Date : 07/05/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE KS JHAVERI)

1.0 This appeal, at the instance of the State, is directed against the judgement and order dated 30th October 2004 passed by Additional Sessions Judge, Fast Track Court No.1, Valsad, in Sessions Case No.576 of 2002, whereby the accused were acquitted of the offences alleged against them.

2.0 The prosecution case, in brief, is as under:

2.1 One Dharmubhai Gopalbhai Bharat of village Dhamani, Taluka Dharampur, District Valsad lodged a complaint with Dharampur Police Station on 6.6.2004. The said case was registered at Register No.18/02 under section 174 of Criminal Procedure Code. According to the complainant, on the road going from Makdaban to Dhamani, a dead body of unknown person was lying in the mines of Gadagabari and he did not know the name and address of the deceased. On receiving the said information Shri R.C. Chaudhary, Police Sub Inspector of Dharampur Police Station started investigation. He brought the dead body to Dharampur Government Hospital and inquest was carried out on 7th June 2002. During the inquest three injuries at the neck and two injuries at chest and one injury at the left thigh caused by some sharp

edged weapon were noticed. From the postmortem report it was disclosed that death of the deceased was caused due to the aforesaid injuries. Therefore offences under section 302, 201, 120B read with section 34 and 114 of IPC was registered against the accused persons.

2.2 After investigation and filing of chargesheet the Judicial Magistrate, First Class, Dharampur, committed the case to the Sessions Court, Valsad which was numbered as Sessions Case No.576 of 2002. The Sessions Court, Valsad, after hearing the parties, acquitted all the accused of the offences leveled against them, against which the present appeal has been filed by the State.

3.0 Mr. K.T. Dave, learned Advocate for the State submitted that the Sessions Court has failed to appreciate that the prosecution has examined twelve witnesses in support of the case of the prosecution and also produced sixteen documentary evidence in support of the case of the prosecution and looking to the evidence on record, it cannot be said that no case is established against the accused. He submitted that it was proved beyond doubt that the accused persons were having competition with the deceased Dineshbhai Bachubhai in respect of welding contract business and because of the said enmity the accused persons with the help of each other killed Dineshbhai. He submitted that the accused had taken Dineshbhai on motor cycle under the guise of

taking to Vilpudi village and caused him grievous injuries. He submitted that after committing the offence the body was thrown into the mines and there are ample evidence on record to convict the accused. He submitted that Dhamubhai Gopalbhai , who was examined at Exhibit 27 has fully supported the case of the prosecution and he being Sarpanch of the village, he has no reason to depose against the accused. He further submitted that witness Dhansukhbhai Mohanbhai Patel has seen Dineshbhai with the accused no.1 and he had identified him in the Court. Mr. Dave therefore submitted that therefore there is sufficient evidence on record to establish the case against the accused.

4.0 On behalf of the prosecution in all 12 witnesses were examined the following witnesss.

1. Gamanbhai Ranchhodbhai Patel (Exh.16)
2. Rameshbhai Lallubhai Patel (Exh.18)
3. Hanifbhai Gulambhai Shaikh (Exh.19)
4. Shukkarbhai Babubhai (Exh.25)
5. Dharmubhai Gopalbhai (Exh.27)
6. Janubhai Litabhai (Exh.30)
7. Ganapatbhai Narsinhbhai Patel (Exh.32)
8. Dhansukhbhai Mohanbhai Patel (Exh.33)
9. Chetanbhai Batukbhai Patel (Exh.34)
10. Sangitaben Kanubhai Patel (Exh.35)
11. Lallubhai Vestabhai Patel (Exh.36)
12. Rameshbhai Chhaganbhai Chaudhary (Exh.39)

5.0 One Dharambhai Gopalbhai (PW5) was examined at Exhibit 27.

He is sarpanch of the village. According to him on 6.6.2002 he had gone to Dharampur. At about 3 O clock he was coming back and at that time he met two women and a man near the place of incident who told him that in the mine a man was lying. He haf gone and examined the body and found that he had died. Accordingly he informed the police and the complaint was registered. Inquest Panchnama was also prepared. However, later on this witness was declared hostile.

6.0 Ganpatbhai Narsinhbhai Patel (PW7) was examined at Exh.32 and he stated that on 5.6.2002 he along with his wife was going to Bhilwada on his motor cycle and while coming back, near GIDC, he has seen Dineshbhai and three others on a motor cycle. He recognized Dineshbhai, but he did not know the other three persons. He has also not noticed the number of the vehicle nor the dress of Dineshbhai.

7.0 Dhansukhbhai Mohanbhai Patel (PW8) was examined at Exh.33. He stated that on the day of the incident Kanubhai was seen with Dineshbhai. He further submitted that earlier Kanubhai was working with Dineshbhai. On the next day when he went to the house of Dineshbhai, wife of Dineshbhai had asked him whether he has seen Dineshbhai and he had told her that Dineshbhai was with Kanubhai. However, on cross examination it was disclosed that on the day of the incident at 6 pm this witness had gone to the house of Dineshbhai and

met him. However, according to chargesheet Dineshbhai was missing from 3 pm onwards on that day. Therefore his statement was doubtful and not believable.

8.0 Chetanbhai Batukbhai Patel (PW9) was examined at Exh.34. According to him he met Dineshbhai at 6 pm on the day of the incident. In that case there was no case of missing of Dineshbhai at 3 pm on that day as per the chargesheet. According to him, on that day at 6 pm Dineshbhai had gone to search somebody along with Dhansukhbhai to prepare chicken. However, in the evidence of Dhansukhbhai there is no such statement and therefore there are contradictions in the evidence of this witness.

9.0 Sangitaben Kanubhai Patel (PW10) was examined at Exh.35. But she was declared as hostile witness. Lallubhai Vestbhai (PW11) was examined at Exh.36 and this witness was also declared as hostile. Gamanbhai Ranchhodbhai (PW1) was examined at Exh.16, Rameshbhai Lallubhai (PW2) was examined at Exh.18, Hanifbhai Gulambhai Shaikh(PW) was examined at Exh.19, Shukkarbhai Babubhai (PW4) was examined at Exh.25. However, all these witnesses did not support the case of prosecution.

10.0 As a result of hearing and perusal of the record it is found that the

incident had happened on 6th June 2002 and the dead body was lying in a forest at a lonely area. There is no eye witnesses to the incident in question. There are no circumstantial evidence to point out that the accused are in any way connected with the death of Dinmeshbhai. There is also no evidence to show that any of the accused has caused the alleged offence. Even the motive was not established. Though Dhansukbhai Mohanbhail Patel (PW8) stated that he had seen Dineshbhai with the accused, his version was not believed by the Sessions Court as there are many contradictions in his statement. Even the theory of "last seen together" is not established by the prosecution beyond any doubt. We are, therefore, in complete agreement with the reasonings adopted and findings arrived at by the Sessions Court. No case is made out to cause interference.

11.0 In the premises aforesaid there are no merits in the appeal and the same is therefore dismissed.

[ANIL R. DAVE, J.]

[K.S. JHAVERI, J.]

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